

ST 00-0070-GIL 03/20/2000 SERVICE OCCUPATION TAX

Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). (This is a GIL).

March 20, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 1, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Since employing a salesperson who resides in your state, we have attempted for months to find out the proper tax status of our company. Our understanding of the law was that our type of custom printing was not subject to tax. We were notified by the Illinois Central Registration that we are liable for Service Occupation Tax but exempt from Retailers' Occupation Tax. I then spoke with a representative in your Problems Resolution Division. They do not believe that our situation is subject to either tax. They advised me to write to this department for a ruling on this matter.

The following is a description of our situation and activity. We are a printing manufacturing company. We print large format printed advertising materials. This printing is customized based on the customer's specifications and can only be sold to that customer. None of our printing manufacturing facilities is located in Illinois. Our relationship with Illinois is that we have a salesperson residing in Illinois. This salesperson works from their home. Our company has no office or physical location in Illinois. The business cards for our salesperson list the name and location of our manufacturing plant in STATE with a toll free telephone number. While our salesperson does contact customers in Illinois and the surrounding areas, all aspects of the sale are finalized and approved by management at our location in CITY/STATE. For example, credit limits and terms must be approved by our credit manager; price quotes must be obtained from our estimators; approval to accept the sale must be made by our plant or production manager; and details of the job are monitored by our customer service representatives. All of the individuals responsible for these functions are located at our STATE Location. When the printing is complete, the finished product will be shipped by common carrier from our plant in STATE according to shipping instructions, either to a distribution point or dropped shipped to multiple locations nationwide (for example, COMPANY and other nationwide chains).

We understand that since our product is customized and specific to our customers, we are not subject to Retailers' Occupation Tax. We would like written confirmation of this statement. We also need a ruling on the Service Occupation Tax. We are normally classified as a manufacturer and not subject to any Service Tax. We do not purchase or use materials in Illinois. The manufacturing and labor involved to produce our product does not take place in Illinois. Many of the sales that may be obtained through our salesperson may not even be shipped into Illinois. Based on these facts and the conflicting opinions from your own branches, we do not believe that we are subject to these taxes. In any case, we need clarification and something in writing specific to our company. If it is your ruling that we should collect and remit tax, we need something that we can show to any customer to document your position.

We would appreciate a response to this letter as quickly as possible. The ICS Payment and Correspondence Unit has granted our company a 45 day extension on a 10 Day Demand Notice dated 01/24/2000. I can be contacted at ##### if there are questions or additional is needed.

We are unable to give you the ruling you request in the context of a General Information Letter. General Information Letters, as stated above, give general, non-binding information to taxpayers. In order to receive the specific ruling you request you must submit the information necessary for a Private Letter Ruling.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.2000, which is the regulation for "Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price.

Items that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Generally, special order printers calculate their tax base utilizing either the third or fourth method. The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Generally speaking, no tax liability is incurred by the customers of out-of-State servicemen who have nexus with Illinois and which are also qualified to utilize the final method listed above. This being the case, such servicemen have no tax collection obligations on such service transactions. Conversely, the other three methods generally result in customers accruing Service Use Tax liability which servicemen who have nexus with Illinois are required to collect and remit to the Department.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

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Enc.